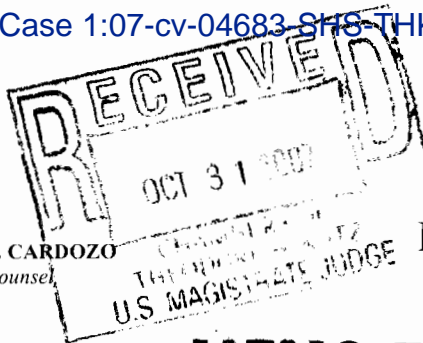




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MEMO ENDORSED

October 30, 2007

VIA HAND DELIVERY

Honorable Theodore H. Katz
United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1660
New York, New York 10007-1312

Re: Donald White v. Rodrigue et. al, 07 CV 4683 (SHS) (THK)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and was recently assigned to handle the defense of the above-referenced matter.¹ I write to advise the Court that this Office recently received a courtesy copy of the summons and amended complaint in this matter, and respectfully requests sixty days, until December 31, 2007, to investigate service of the summons and amended complaint on the named defendants, resolve representation issues, and, if appropriate, to answer or otherwise respond to the complaint. I write directly to the Court because plaintiff is incarcerated and proceeding *pro se* in this matter. This is the first request for an enlargement of time.

In the amended complaint, plaintiff claims that he was assaulted while incarcerated at Rikers Island. Plaintiff names Correction Officer Rodriguez (incorrectly identified in the caption of the amended complaint as "Rodigue"), Correction Officer "Paris," Correction Officer Kelly, Correction Officer Heyward, Correction Officer Brunson, Correction Officer Johnson, and Correction Officer Boyd as defendants.² From a review of the docket sheet, which was updated on October 18, 2007, it appears that Correction Officer Brunson, Correction Officer Johnson, and Correction Officer Boyd were recently served with a copy of the summons and amended complaint. Additionally, while the docket sheet does not indicate that Correction Officer Rodriguez and Correction Officer Kelly were served, this Office

¹ This case has been assigned to Assistant Corporation Counsel Brian Francolla, who is presently awaiting admission to the bar, and is handling this matter under supervision. Mr. Francolla may be reached directly at (212) 788-0988.

² The City is not named as a defendant in this action.

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TO COUNSEL OF RECORD ON 10/31/07

In light of the above, we respectfully request an enlargement of time to investigate service of the summons and amended complaint on Officers Rodriguez, Kelly, Brunson, Johnson, and Boyd, and to resolve representation issues. Pursuant to Section 50-k of the New York General Municipal Law, this Office must determine, based on a review of the case, whether we may represent each Officer. Each Officer must then decide whether he wishes to be represented by this Office. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)). If so, we must obtain the Officer's written authorization. Only after this procedure has been followed can we determine how to proceed in this case.


Additionally, as plaintiff is claiming physical and/or psychological injuries, an enlargement of time will allow us to forward a medical release to plaintiff for execution so that we can obtain any medical records that may exist for physical and/or psychological treatment received in connection with the incident. As Your Honor is aware, pursuant to HIPAA, we cannot obtain plaintiff's medical records without these authorizations.

Accordingly, this Office respectfully requests a sixty day enlargement of time, until December 31, 2007, so that we may investigate service, resolve representation issues, obtain the relevant documents, and, if appropriate, answer or otherwise respond to the complaint.

In view of the foregoing, it is respectfully requested that the Court grant the within request. Thank you for your consideration herein.

Defendants' time to answer or otherwise respond to the Amended Complaint is extended to December 31, 2007.

Respectfully submitted,



Sarah B. Evans
Assistant Corporation Counsel
Special Federal Litigation Division

SO ORDERED

10/31/07


THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE

MEMO ENDORSED

³ Upon information and belief, the individuals identified in the caption of the amended complaint as Correction Officer Paris and Correction Officer Heyward have not been served with a copy of the summons and amended complaint or requested legal representation from the Office of the Corporation Counsel, and therefore are not defendants in this action. Without making any representations on their behalf, it is respectfully requested that, in the event they were served, their time to respond to the amended complaint be similarly enlarged so that their defenses are not jeopardized while representational issues are being decided.

cc: Mr. Donald White (By mail)
Plaintiff *Pro Se*
DIN # 07-A-0414
Marcy Correctional Facility
PO Box 3600
Marcy, New York 13403-3600